IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 54 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF WEALTH TAX

Versus

CHANDRASINHRAO D GAEKWAD

Appearance:

MR MANISH R BHATT for Petitioner

SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

Date of decision: 05/11/98

ORAL JUDGEMENT

1. At the instance of Commissioner of Wealth Tax, Baroda, two questions of law arising out of its orders in Wealth Tax Appeals Nos. 585 to 580/Ahd/81 relating to assessment years 1966-67 to 1970-71 has been referred to this court for its opinion with the statement of the

case. The questions referred are as under:

"1.Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that, on the death of Shri Chandrasinhrao on 27th March, 1965, there was complete partition of the HUF of Dadasaheb Ukajirao of which Chandrasinhrao was the Karta?

2.Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the estate of the deceased Chandrasinhrao in the HUF properties was liable to be excluded from the properties of the HUF of Dadasaheb Ukajirao?"

2. The facts and circumstances of the case in which the questions have arisen are that assessee Chandrasinhrao H. Gaekwad was being assessed as Hindu Undivided Family. The Hindu Undivided Family consisted of two brothers Shri Chandrasinhrao and Shri Dilipsinhrao, sons of Dadasaheb. Chandrasinhrao was the karta of the family. Said Chandrasinhrao died on 27.3.65. On the death of Shri Chandrasinhrao on 27.3.65 it was claimed for the assessment year 1966-67 and subsequent assessment years that by operation of law a complete partition of HUF properties between the two branches of brothers had taken place. The claim was made in Income Tax proceedings as well as in Wealth Tax proceedings. The Wealth Tax Officer did not agree with the claim of the assessee, as the same was not accepted by Income Tax Officer too under Section 171 of the Income Tax Act 1961. On appeal before the Asst. Appellate Commissioner, he too did not agree with the claim of the partition either under Wealth Tax Act or under Income Tax Act. However, Asst. Appellate Commissioner upheld the contention of the assessee that to the extent the property has vested in the heirs of Chandrasinhrao by succession it has ceased to be the property of Hindu Undivided Family and the same has to be excluded from the assessment of wealth of the existing Hindu Undivided Family. Appeal against the order of Asst. Appellate Commissioner of Wealth Tax did not find favour with the Tribunal. Following decision of this court in CWT v. Kantilal Manilal 90 ITR 269 and of the Mysore High Court in CIT v. Smt. Nagaratnamma 76 ITR 352, the Tribunal confirmed the view taken by the Asst. Appellate Commissioner.

3. The question No.1 requires an enquiry whether as a result of death of Shri Chandrasinhrao on 27.3.65, a complete partition of Hindu Undivided Family of Dadasaheb

Ukajirao of which Chandrasinhrao was the karta took place and the existence of that Hindu Undivided Family as such came to an end.

4. The contention of the assessee in this regard has been founded on the provisions of Hindu Succession Act according to which succession of estate left by a deceased Hindu male or female is governed. In the present case, we are concerned with properties which are owned by HUF of which the deceased was a member-coparcener and not by the deceased in his individual capacity, that is to say coparcenary interest of the deceased in the ancestral properties. Interest of a male Hindu in a coparcenary property prior to commencement of Hindu Succession Act devolved on the remaining members of coparcenary by survivorship and not by succession, that is to say, the HUF and its entity would survive until by partition its status was brought to an end. A major change has been affected by Hindu Succession Act in that branch of law. Generally succession to a male Hindu is governed by Section 8 in respect of his properties and a succession of a female is governed by Section 15 and 16 of the Act, concerning her properties. In the case interest of a male Hindu in a coparcenary Section 6 provides that where a male Hindu dies after the commencement of the Act having at the time of his death interest in the Mitakshari coparcenary property his interest in the property will devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act provided that if the deceased had left him surviving a female relative specified in class I of the schedule or a male relative specified in that class who claims through such female, the interest of the deceased in Mitakshari coparcenary property shall devolve by testamentary or intestate succession as the case may be under this Act and not by survivorship. Thus, substantive provision has been made deviating from the existing course of devolution of interest in coparcenary in the presence of a female heir of class I or a male heir of class I claiming through a female heir of class I. In the absence of a female relative specified in Class I or a male relative claiming through such female relative specified in class I of the schedule, the rule of devolution by survivorship to remaining members of coparcenary survives. Section 6 further provides where the property on the death of a male Hindu devolves by succession and not by survivorship according to the provisions of the Act, for the purpose of giving effect to that provision, that the interest of a Hindu Mitakshari coparcenary shall be deemed to be the share in

the property that would have been allotted to him if a partition of the property had taken place immediately before his death irrespective of whether he was entitled to claim partition or not. It is relying on this Explanation 1 to Section 6, claim to complete partition was made by the respondent assessee. We may clarify that when one speaks of interest in coparcenary, it means that property was not divided, family was continuing as joint, and deceased has only incohate and undeterminate undivided interest in such properties of which either he could himself claim partition, or even if under relevant rules of shastric Hindu Law he may not be entitled to claim partition but is entitled to share if partition in fact takes place e.g. a minor or a male member who is a coparcener while his father is alive.

5. A close look at the provisions of Hindu Succession Act, particularly Section 6 would go to show it does not ordain that a coparcenary which exists at the time of the death of one of its male member come to an end on the death of its member. It only deals with devolution of the undivided or unseparated interest that the deceased coparcener had in the coparcenary property at the time of his death. Devolution of that interest is to be governed depending upon the fact who are the surviving heirs to the deceased to claim the property on his death. It is a composition of the heirs that is determinative factor whether the property is to devolve by survivorship or the remaining members of coparcenary or by succession, to body of heirs. Coparcenary is much narrower concept which includes only such male members of the undivided Hindu family who take interest in the joint property by birth, and does not include any female though they too are members of HUF. Explanation 1 is only the machinery provision providing for determining the quantum of interest that the deceased coparcener had in the coparcenary property at the time of his death to pass on by succession. It does not envisage actual partition of the property and disruption of the family bringing an end to coparcenary or the status of the family as HUF. Therefore on first premise, the contention of the assessee is rightfully not accepted by the Tribunal that on the death of Chandrasinhrao, the HUF of which he was a karta, automatically the properties of the family were partitioned and it stood disrupted so as to lay claim to separate assessment in the status of a different entity, on the basis of any notional partition that might be assumed for the purpose of determining the share of the deceased at the time of his death for the purpose of working out extent of this estate for devolution of his interest to his heirs, in case a female relative

specified in class I or a male relative claiming through such female relative specified in class I of the schedule to Hindu Succession Act, survives the deceased. It may be noticed here that there is no material in the statement of case or with the annexures submitted along with it to suggest whether any female heir specified in class I of the schedule or any male heir claiming through such female heir specified in class I in the schedule survived deceased Chandrasinhrao so as to invoke the applicability of Section 6 in his case. The existence of such heir at the time of death of a male coparcener is a question of fact which cannot be left to assumption.

6. Section 20 of the Wealth Tax Act deals with the question about partition of a HUF and its continued assessment in that status. For the purpose of Wealth Tax three classes of assessees have been envisaged under Section 3 which is a charging Section, namely, individual, HUF and company. Section 20 deals with situation where the assessee is hitherto assessed as HUF and during the course of assessment it is brought to the notice of the assessing officer that the partition has taken place among the coparceners of a HUF, the assessing officer has to make an enquiry to satisfy himself whether the joint family property has been partitioned as a whole among the various members or group of members in definite portions. In case he is so satisfied, he shall record an order to that effect and shall make assessment on the net wealth of the undivided family on that basis. In case he is not so satisfied he by order has to declare that such family shall be deemed for the purpose of the Act to continue to be a HUF liable to be assessed as such. Thus, the continuance or discontinuance of an assessee in the status of HUF depends on recording satisfaction of the assessing officer as to the claim of partition and that satisfaction has to be about partition as a whole among various members or group of members in definite portions. Mere satisfaction or mere claim to severance in status without partitioning of the property in definite portions does not bring an end to the status of HUF as an entity for the purpose of an an assessment of the net wealth owned by it. A declaration about continuance of the status by the assessing officer is required after a claim to partition has been made and rejected, for the purpose of its continued assessment in the status of same HUF.

We may at the outset dispel the assumption that Section 6 of Hindu Succession Act, as such does not speak of deeming a partition. Explanation 1 as read only speaks about deeming the share of the deceased's share in

the property to be that which would have been allotted to him if a partition of property had taken place immediately before his death. It nowhere speaks of `deeming a partition to have taken place'. As a coparcener has a fluctuating and indeterminate share in coparcenary property which cannot be depicted, only thing that is to be deemed is the share that deceased had at the time of his death by hypothising, without deeming, in case partition were to take place. The Legislature has not expressed that `a partition is deemed to have taken place' but only tells us to assume the share `if the partition had taken place', which clearly indicates that no partition either actual or notional is deemed to have taken place. The family as it is minus the deceased continues as before. Law is also trite that succession does not remain in abeyance. There is no hitus between the death of a person and vesting of his estate in his heirs. Actual computation and separation of such interest may be done later on. The effect of succession is that share of the deceased goes out of community ownership of coparcenary and vests in heirs of deceased, in case there is a female heir or male heir claiming through such female survives the deceased, and vests in them in their individual capacity. In the absence of such heirs, no part of coparcenary property is diminished as in that event it continues to devolve by survivorship on the remainder of coparceners. On vesting of such interest, qua such share, the heirs become tenants in common with the coparcenary and they are owners of definite and determinate share of such estate with effect from the date of death of such male members of the coparcenary.

It is nobody's case that any claim to actual partition of the whole property in definite proportion has been made or such partition has taken place. In fact the claim to complete partition has been made on the basis of notional partition, that is deemed for the purpose of determining the share of deceased in coparcenary at the time of his death under Section 6 of the Hindu Succession Act.

The extent of wealth belonging to HUF since after death of one of its male member has to be viewed in that light.

This court had occasion to consider this question in Goswami Brijratanlalji Maharaj v. Commissioner of Wealth-tax, Gujarat II 79 ITR 373 referring to the like provisions of Section 25A of the Indian Income Tax Act, 1922 and disagreeing with the proposition laid down by

the Calcutta High Court in Srilal Bagri v. Commissioner of Wealth-tax (1970) 77 ITR 901 this court opined:

> "At any time when a Wealth-tax Officer is making the assessment, a contention is raised or is sought to be raised before him that a partition has taken place amongst the members of the Hindu undivided family, he has to enter upon an inquiry and satisfy himself whether there has been a partition by metes and bounds. If he is not not so satisfied about the joint family properties having been partitioned by metes and bounds amongst the various members, he has to declare under subsection (2) of Section 20 that such family shall be deemed for the purposes of the Act to continue to be a Hindu undivided family liable to be assessed as such. Once that declaration under Section 5(1)(ii) of the Act, the interest of any individual member of the joint family in coparcenary property of any Hindu undivided family of which he is a member can be safely excluded. The words for the purposes of this Act occurring in Section 20(2) would include within their ambit section 5(1)(ii) as well and so long as the satisfaction about the properties of the joint family having been partitioned by metes and bounds is not reached by the Wealth-tax Officer, he has to declare that such family for the purposes of the Act shall continue to be a Hindu undivided family liable to be assessed as such. Once such a declaration is made, even though there may be a notional partition, and even though for the purposes of Hindu law there is disruption of the joint family, for the purposes of the Wealth-tax Act the family is deemed to continue to be a Hindu undivided family liable to be assessed as such."

The decision in Goswami Brijratanlalji Maharaj has been approved by by Supreme Court in Commissioner of Income-tax v. Sujanni Textiles (P) Ltd. in (1997) 225 ITR 561.

7. In this connection, it would be profitable to refer to decision of Supreme Court in M.K. Balakrishnan Menon v. Asst. Controller of Estate Duty-cum-Income-tax Officer, Ernakulam (1972) 83 ITR 162. The question arose in the context of Section 7 of Hindu Succession Act, which provides in the like manner as Section 6 for devolution of interest of a Hindu in a tarwad, tavazhi or illom to which Marumakkattayam and Nambudri laws apply.

Such interest of a Hindu dying after commencement of the Act in tarwad, tavazhi or illom which was the joint property is to devolve by succession, testamentary or intestate under the provisions of Hindu Succession Act and not according to customary law. For the purpose of working out the measure of deceased interest in the property of tarwad, tavazhi or illom, explanation was provided that the interest of Hindu in the property of tarwad, tavazhi or illom shall be deemed to be the share in the property of the tarwad, tavazhi or illom that would have fallen to him or her if a partition of that property per capita had been made immediately before his or her death among all the members of tarwad, tavazhi or illom, then living, whether he or she was entitled to claim such partition or not. Like provision was made in respect of sthanam property under subsection (3) of Section 7. A Hindu who had an interest in the sthanamdar property dies inviting operating of Section 7 of Hindu Succession Act, a question arose in the estate duty proceedings whether the entire value of sthanamdar property treating to be undivided has to be included in the estate of the deceased for the purposes of determining rate of levy of estate duty or by considering that sthanam stood divided in terms of fiction created under Section 7(3) for determining the interest of the deceased in the Sthanam, and only his share can be included in the estate for the purpose of Estate Duty.

The Apex Court opined that the provisions of Section 7 of Hindu Succession Act together with Section 7 of Estate Duty Act for determining the interest which the deceased had in the sthanamdar property cannot be carried to that extent.

"The result of enactment of Section 7(3) of Succession Act is that the sthanams continued till the death of the sthanamdar and thereafter the sthanam property devolved upon the members of the family to which the sthanamdar belonged and the heirs of the sthanamdar (his personal heirs). The division was to be per capita on the basis of a notional partition having taken place immediately before the death of the sthanamdar.

The legal fiction could not be extended further so as to include an actual division or partition having been effected in the life time of the sthanamdar with the result that he became a divided member for all purposes."

The ratio applies equally to the notional

partition assumed solely for the purpose of determining the interest of a deceased male coparcener in the coparcenary property for the purpose of succession and cannot be carried construing as actual partition resulting in disruption of status of existing HUF as such.

8. In slightly different context, matter was again considered in Commissioner of Income-tax v. Balubhai Nanubhai (HUF) by a Division Bench of this Court in (1996) 220 ITR 334. The question arose in the context of computation of capital gains tax on transfer of capital asset which originally belong to HUF. The asset was transferred after the death of a male member of the coparcenary. The Revenue had claim to assess entire capital gains arising out of transfer of such capital asset in the hands of existing HUF, whereas the assessees which included heirs of the deceased Bhalubhai filed voluntary returns showing separate income in the individual capacities on the basis of inheritance. Two fold contentions were raised firstly that share of the deceased passing on to his heirs by inheritance, no more remained asset of the HUF; and secondly, the widow of the deceased who would have been entitled to a share had the partition taken place between father and son immediately before the death of male member claimed that she had as a result of such notional partition acquired an indefeasible right and claim to share in the property and therefore her entitlement for share in joint property be also excluded on that premise from the ownership of the HUF. The revenue did not contested the exclusion of share vested in heirs. About the second contention, the court opined:

> "In the case of death of a male member of a Hindu undivided family, the existing character of the joint family property is split in two. One is inherited by heirs. Obviously, that passes from the ownership of the Hindu undivided family and vests in the heirs separately as individuals. The second is the remainder in which the members of the family have a share according to the principles of Hindu law to which the persons are subjected. Such remainder interest is divisible according to the rules of partition as and when such division is claimed by any such person having the right to claim partition. ..... The effect of the legal fiction under Section 6 does not extend beyond this. It does not confer on a female member the right to claim partition of coparcenary property except in the contingency

envisaged under Section 6 of the Act, namely, on deemed partition on the death of a male member. Nor does it affect the state of jointness of property except when actual physical partition of such property takes place. Unless such female member voluntarily lays a claim to allotment of a share as a result of partition to herself and specific property is actually allotted to her, the notional share to which she can lay claim remains an integral part of the property of the Hindu undivided family capable of division."

9. Thus the principle that on notional partition assumed for the purpose of working out interest of the deceased male Hindu in the coparcenary of which he was a member does not result in disruption of the status of coparcenary and HUF unless until physical partition takes place by voluntary act of the claimants to partition. The fiction is notional determination of share of the deceased in coparcenary and not of any deemed disruption of coparcenary.

10. As a result of aforesaid discussion, our answer to Question 1 is in negative, that is to say, in favour of Revenue and against the assessee and we hold that the Tribunal was not right in law in coming to the conclusion that on the death of Shri Chandrasinhrao on 27.3.65, there was complete partition of HUF of Dadasaheb Ukajirao.

11. The second question requires consideration of question as to what is the effect on the ownership of the coparcenary over the estate hitherto held by it as property of HUF. It is to be seen that while Section 20 deals with continued assessment of HUF as an entity until the Wealth Tax Officer is satisfied on an enquiry, that partition as a whole among the various members or group of members in definite portion has taken place. However, it does not raise any presumption about continued ownership of all the properties notwithstanding that by operation of law the HUF has been divested of its ownership on whole or any part of it as joint tenants of coparceners. We may point out here the distinction between the two. A joint tenant is a concept under which coowners lay claim to entire property as such, where as coowners holding as tenants in common claim only to extend each one has a share in such joint property. If A and B are co owners of property X as joint tenancy the ownership of each one extends to every inch of the property in jointness with the other in property X in its entirety. In case they hold the property X as co-tenants

say for example in equal share. Each one has only 1/2 share in property X, none can claim proprietorship on whole of X. Section 3 of the Wealth Tax Act, which is a charging section, levies tax on the net wealth, on the corresponding valuation date, of every individual, HUF and company at the rate or rates specified in Schedule I. Section 2(m) of the Act defines the net wealth to mean all of the assets belonging to the assessee on the valuation date including assets required to be included in his net wealth as on the date under this Act is an excess of correct valuation of all the debts owed by the assessee.

Thus, for the purpose of inclusion in the net wealth of an assessee whether he is individual, HUF or company, only that much value of an asset can be included in the net wealth of the assessee which belong to it or is owned by it. An asset or property or any part therein which does not belong to the assessee cannot be included in computation of net wealth of such assessee unless there exists a legal fiction or some statutory provision to include the same in the net wealth of the assessee notwithstanding that the asset does not belong to it. It is not the law that where two persons are co tenants or joint tenants except in the case of property belong to Hindu Undivided Family. Each one of them has to include the entire value of the asset in its net wealth. It is only that portion of the asset which belong to it can form part of the computation of net wealth of the assessee. It cannot be doubted that on the death of a male coparcener, where section 6 comes into operation, the interest of deceased in coparcenary devolves by succession to his heirs. Such devolution in heirs is per capita and in their individual capacity. That is the law laid down by the Supreme Court in Commissioner of Wealth-tax, Kanpur v. Chander Sen (1986) 161 ITR 370.

The heir to whom such interest devolves by succession may or may not be member of the Hindu Undivided Family of which the deceased was a member at the time of his death e.g. a married daughter or son or daughter of a predeceased daughter or any other heir who has separated from the deceased during his life time as a result of partial partition. The co-ownership of HUF and body of heirs of deceased thus do not enjoy community of interest. The taxable entity is only an individual, HUF or company. The body owning the property jointly by the remainder of HUF and the body of heirs is neither individual HUF or company but at best an association of person of individuals (heirs) and HUF (the remainder) and cannot be taxed jointly in respect of their joint

property.

The property on which the coparcenary or the HUF loses its domain as owner and vests in the heirs of the deceased who may or may not be member of Hindu Undivided Family of which the deceased was a member, as their individual property cannot be said to be belonging to the HUF which is a continuously existing entity, on the valuation date, for the purpose of inclusion in its net wealth. One has to keep in mind the distinction between the continued existence of a HUF with the same status and continued domain over the coparcenary property as belonging to it notwithstanding that its status in law may come to an end merely on claiming of a partition by any one or more of members entitled to claim such partition that is to say by manifesting such intention on the part of one or more of them notwithstanding physical partition may take place much later. For the purpose of taxation such status will not come to an end unless there is a total partition in definite proportion physically, to the extent the same is capable of physical partition and a finding to that effect is recorded. But continued existence in the same status does not ipso facto envisage continued ownership qua the assets in the same form or to the same extent if by act of parties or by operation of law, the ownership of property where such ownership is foundation of taxation goes beyond the pale of the ownership right of the HUF as such entity.

12. None of the decisions which have been referred to by the learned counsel refers to this controversy under the Wealth Tax Act. In a decision of this court in Commissioner of Wealth-Tax, Gujarat II v. Kantilal Manilal (1973) 90 ITR 289, a question like the one had arisen in identical circumstances. Certain jewellery belong to HUF. One of the coparcener of HUF died. His share devolved on mother and wife under the Hindu Succession Act because of the operation of Section 6 of the said Act. The Income Tax Appellate Tribunal held that the share of D in the joint family properties devolved on U and P and thus ceased to belong to the assessee family and the assessee was thereafter entitled only to the remaining share in those properties. As the value of jewellery to the extent it belong to the family was less than Rs.25,000/- and was exempt under the then existing provision, the same was held to be not taxable in the hands of the family. After referring to the provisions of Section 6, 30 and 19 of the Hindu Succession Act, the court held that heirs would take the share of the deceased coparcener in the properties of HUF between themselves as tenants in common and a fortiori,

it must follow that each of the heirs can (sic) the Hindu undivided family would hold the properties as tenants in common.

13. Further alluding to the question that whether it could be said that a particular property, namely, jewellery or the house or other asset belonging to HUF at the date of the death of the deceased, the heirs had each 1/6th share and the assessee HUF had remaining 2/3rd share and whether in computing net wealth of the HUF, the value of jewellery to be taken to be only 2/3rd share of the property and not the whole of it, the Court answered :

"When it is said that the Hindu undivided family, Usha and Pushpavati were tenants-in-common in respect of each of those properties. Each one of them had an undivided share in every item of those properties. It is true that none of them could predicate at any point of time that a particular identified part of any property belonged to him. So also it is equally true that if any of them sought to ascertain and separate his share in the properties, he would not get one-third share in specie from each of the properties: some properties may be given to him in lieu of his one-third share in the properties while some others may be given to the other tenants-in-common".

The court further opined :

"Usha and Pushpavati as heirs of Dinesh had one-third share in the properties of the Hindu undivided family which included the jewellery while the assessee Hindu undivided family had only the remaining two-third share. How then could it be said that the jewellery belonged wholly to the assessee Hindu undivided family? If at all it could be said consistently with law and fact that the jewellery belonged solely to one of two co-owners, why should it not be held that it belonged to Usha and Pushpavati rather than the Hindu undivided family? We may ask ourselves the question : could it be said by the Hindu undivided family that the jewellery belongs wholly to it? The answer would straightaway be that it does not belong wholly to the Hindu undivided family but it belongs to the Hindu undivided family and Usha and Pushpavati".

14. This answers the question raised in this case also. The property which hitherto belong to HUF exclusively and was held as joint tenants with right to survivorship in each one of coparcener, on the death of one of coparceners would belong to HUF and heirs to whom the deceased's interest in coparcenary devolved jointly as tenants in common, and assessment has to be framed by computing net wealth as per their respective interest in the joint property of coparceners as joint tenants in the status of HUF and respective shares of heirs which is held by them inter-se as tenants-in-common as well as jointly with coparceners too as tenants in common.

15. However, for the present purposes, the question does not rest here. The principle, the Tribunal has stated correctly. However, in our opinion, necessary facts on which the applicability of this principle can be enquired has not been found by the Tribunal. As we have noticed in earlier part of our judgment that Section 6 comes into operation only if there is in existence at the time of death a female heir of class I in the schedule or a male heir claiming through such female heir in class I of the schedule appended to the Hindu Succession Act. If in the absence of existence of any such heir at the time of death the interest of the deceased in coparcenary devolves on remaining members of coparcenary by survivorship and question of assuming partition for determining the share of the deceased and divesting the coparceners of such interest in favour of heirs of the deceased would not arise. In the absence of such material it is not possible to hold that the Tribunal was justified in allowing the exclusion of the interest of assessee HUF without reaching finding that the necessary assessee HUF without finding that necessary facts for operation of Section 6 in the present case existed.

16. Learned counsel for the revenue has relied on a decision in Tatavarthi Rajah and Another v. Commissioner of Wealth-tax (1997) 225 ITR 561 in support of the contention that so much of the interest of the deceased in the coparcener vested in his share is not liable to be excluded from the assessment of net wealth of the HUF.

Having carefully perused the decision we are unable to find any such ratio therein. It does support the learned counsel about the continued status of HUF without recording a finding of actual partition. However what property is to be included in computing its net wealth and whether the interest of the deceased which has vested in his heirs as independently of their interest in HUF properties in their individual capacity will continue

to be taxed in the HUF was neither raised nor decided. In fact the only question before Their Lordships of the Supreme Court was whether the provisions of Section 20 would govern the case where status of HUF has come to an end even before commencement of the Act. Therefore on the question before us, the decision is of little assistance.

17. We answer second question accordingly also in negative, that is to say, in favour of Revenue and against the assessee on finding that in the facts and circumstances of the case Tribunal did not consider the existence of facts necessary for application of principles of law which it has posited correctly.

The assessee has not appeared in spite of notice.

There shall be no order as to costs.

(Rajesh Balia, J)

(A.R. Dave, J)